THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.28128 of 2005

Dated:1st August, 2006

Between:

M.Sudershan. **…..PETITIONER**

AND

The Industrial Tribunal-II, rep by
Its Chairman, II Floor, Chandravihar,
M.J. Road., Hyderbad and another. **….RESPONDENTS**

THE HONOURABLE SRI JUSTICE
N.V.RAMANA

W.P.No.28128 of 2005

ORDER:

The petitioner is questioning the award passed by the labour Court wherein the labour Court ordered reinstatement of the petitioner with continuity of service but without back-wages and other attendant benefits and stoppage of 4 increments from the date of the petitioner's unauthorized absence with cumulative effect.

The petitioner who is a driver in the respondent Corporation was issued charge sheet for his unauthorized absence from 24-1-1999 to 5-3-1999. Petitioner submitted his explanation on 28-5-1999 denying the said charge, but the respondent after conducting an enquiry passed the removal order dated 18-8-2000. Aggrieved by the order of removal petitioner raised an industrial dispute in I.D.No.123 of 2005. The labour Court ordered reinstatement of the petitioner into service but however not granted back-wages and other attendant benefits and imposed a punishment of stoppage of 4 increments with cumulative effect, which is the subject matter of the writ petition.

Learned counsel for the petitioner submitted that the absence

which is misconduct as alleged by the respondents is with sufficient cause and though the petitioner has produced certificate issued by the Civil Surgeon of Osmania General Hospital the labour Court has failed to take into consideration the same. The learned counsel further submitted that though the labour court ordered reinstatement of the petitioner into service, not granting of back-wages and other attendant benefits and further imposition of penalty of 4 increments with cumulative effect is erroneous.

Heard the learned counsel for the petitioner as also the learned Standing Counsel for A.P.S.R.T.C and perused the award of the labour Court.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

A perusal of the award of the labour Court would disclose that the petitioner was unauthorisedly absent for 1 ½ month. The labour Court felt that the petitioner would be entitled for lenient punishment than removal from service. While doing so, the labour court reinstated the petitioner with continuity of service but however imposed punishment of stoppage of 4 increments with cumulative effect as the

petitioner without exhausting departmental remedy of appeal and review has approached the labour court, that too after 3 ½ years of his removal from service. The Labour Court has rightly exercised its discretion by passing the award impugned.

Insofar as back-wages are concerned, the back-wages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]). In the instant case, though the Labour Court directed the respondents to reinstate the petitioner into service, it is not as if the charge leveled against him was set aside. The Labour Court while upholding the charge leveled against the petitioner, directed his reinstatement into service. At any rate, the petitioner cannot claim entitlement of backwages, more so when the charge leveled against him, was upheld by the Labour Court.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

In the above view of the matter, I find no infirmity or perversity in

the award passed by the Labour Court, warranting interference by this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

(N.V. RAMANA, J.)

Date:1st August, 2006.

GRK

---

[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63